

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 MIGUEL ANGEL GARCIA,

12 Plaintiff,

13 v.

14 CORRECTIONS CORPORATION OF  
15 AMERICA,

16 Defendant.

No. 2:18-cv-00452 EFB P

ORDER

17  
18 This action was removed to this district from state court on February 28, 2018. ECF No.  
19 1. Now pending before the court is defendant Corrections Corporation of America's  
20 ("CoreCivic")<sup>1</sup> motion to change venue. ECF No. 18. Therein, CoreCivic argues that venue is  
21 proper in the Western District of Oklahoma. *Id.* at 3. On March 14, 2019, the court directed  
22 plaintiff to file a response to CoreCivic's motion. ECF No. 21. The court also directed both  
23 parties to address the forum selection clause contained in the contract<sup>2</sup> between CoreCivic and the  
24 California Department of Corrections and Rehabilitation ("CDCR"). *Id.*

25  
26 <sup>1</sup> Defendant notes that Corrections Corporation of America is now CoreCivic, Inc.

27 <sup>2</sup> Plaintiff is suing under this contract, claiming that CoreCivic breached its contractual  
28 obligation to provide him with adequate medical care. ECF No. 1-1 at 10. He also sues under a  
theory of "general negligence." *Id.* at 9-10.

1 Plaintiff has now filed an opposition wherein he claims to be a third-party beneficiary of  
2 the foregoing contract and states his intention to invoke the forum selection clause. ECF No. 22.  
3 CoreCivic has filed a reply. ECF No. 23. For the reasons stated hereafter, CoreCivic's motion is  
4 granted.

### 5 Legal Standard

6 "For the convenience of parties and witnesses, in the interest of justice, a district court  
7 may transfer any civil action to any other district or division where it might have been brought or  
8 to any district or division to which all parties have consented." 28 U.S.C. § 1404. In weighing a  
9 motion to change venue, courts first consider whether subject matter jurisdiction, personal  
10 jurisdiction, and venue are proper in the transferee district. If those elements are met, courts then  
11 consider whether convenience of the witnesses and parties and the interests of justice favor  
12 transfer. The purpose of Section 1404(a) is to "prevent the waste of time, energy, and money, and  
13 to protect litigants, witnesses and the public against unnecessary inconvenience and expense."  
14 *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal citations and quotation marks omitted).  
15 In analyzing whether the "interests of justice" militate in favor of a transfer, the Ninth Circuit has  
16 set forth a number of relevant factors a court should consider, including:

17 (1) the location where the relevant agreements were negotiated and  
18 executed, (2) the state that is most familiar with the governing law,  
19 (3) the plaintiff's choice of forum, (4) the respective parties' contacts  
20 with the forum, (5) the contacts relating to the plaintiff's cause of  
21 action in the chosen forum, (6) the differences in the costs of  
litigation in the two forums, (7) the availability of compulsory  
process to compel attendance of unwilling non-party witnesses, and  
(8) the ease of access to sources of proof.

22 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).

### 23 Analysis

#### 24 A. Forum Selection Clause and Plaintiff's Status as a Third-Party Beneficiary

25 In its reply, CoreCivic points out that Section 9.24 of its contract with CDCR states:

26 This Agreement shall benefit and burden the parties hereto in  
27 accordance with its terms and conditions and is not intended, and  
28 shall not be deemed or construed, to confer rights, powers, benefits  
or privileges on any person or entity other than the parties to this  
Agreement. *This Agreement is not intended to create any rights,*

1           *liberty interests, or entitlements in favor of any CDCR Offender. The*  
2           *Agreement is intended only to set forth the contractual rights and*  
3           *responsibilities of the Agreement parties. CDCR Offenders shall*  
4           *have only those entitlements created by Federal or State*  
5           *constitutions, statutes, regulations, case law, or applicable court*  
6           *orders.*

7           ECF No. 1-1 at 70 (emphasis added). CoreCivic argues that this clear language is dispositive as  
8           to plaintiff's status as a third-party beneficiary. The court agrees. California courts have  
9           interpreted such explicit disclaimers to preclude third-party beneficiary status. *See, e.g., Sessions*  
10          *Payroll Mgmt., Inc. v. Noble Const. Co., Inc.*, 84 Cal. App. 4th 671, 680-81 (Cal. App. 2000)  
11          (third party not covered by attorney fee position where "the contract expressly disclaims that it  
12          creates any rights or confers any benefits on third parties . . ."); *Brown v. California Adm'rs &*  
13          *Consultants, Inc.*, 45 Cal. App. 4th 333, 343 (Cal. App. 1996) (finding that, where agreements  
14          explicitly informed appellant that defendants had no responsibility for investment choices, "[i]t is  
15          difficult to imagine language that would more clearly limit a contracting party's duty to another").

16          In light of the fact that the contract explicitly disclaims any entitlements to CDCR  
17          offenders, the court concludes that plaintiff lacks standing to invoke the forum selection clause.

18                   B.       Transfer Factors

19                  Turning to the transfer factors identified *supra*, the court concludes that this case should  
20          be transferred.

21                   1.       Venue, Subject Matter Jurisdiction, and Personal Jurisdiction

22                  Where, as here, an action is before the court under diversity jurisdiction, a venue is  
23          appropriate under 28 U.S.C. § 1391(b)(2)<sup>3</sup> if the action could have been brought there. CoreCivic  
24          argues that this action could have been brought in the Western District of Oklahoma. It notes that  
25          plaintiff alleges he was denied adequate medical care while incarcerated at North Folk  
26          Correctional Facility ("NFCF") – a facility located in Sayre, Oklahoma (and within the

27          //////

---

28                  <sup>3</sup> This section provides that a civil action may be brought in "a judicial district in which a  
substantial part of the events or omissions giving rise to the claim occurred, or a substantial part  
of property that is the subject of the action is situated."

1 jurisdiction of the Western District of Oklahoma). Thus, the court concludes that venue is proper  
2 within the transferee district.

3 Subject matter jurisdiction exists in the transferee district insofar as the matter in  
4 controversy exceeds 75,000 dollars (ECF No. 1-1 at 7), plaintiff is a citizen of California, and  
5 CoreCivic is a Maryland corporation with principal place of business in Tennessee. *See* 28  
6 U.S.C. § 1332.<sup>4</sup>

7 Specific jurisdiction over CoreCivic exists in the transferee district insofar as its “contacts  
8 with the forum [gave] rise to the cause of action before the court.” *Doe v. Unocal Corp.*, 248  
9 F.3d 915, 923 (9th Cir. 2001). In its motion, CoreCivic states that it owns and operates NCF  
10 and, during the time period relevant to this case, incarcerated CDCR inmates (including plaintiff)  
11 at that facility pursuant to an agreement with the State of California. ECF No. 18 at 2.

12 2. Convenience of Witnesses and Interests of Justice

13 CoreCivic persuasively notes that all of plaintiff’s claims stem from allegedly inadequate  
14 medical care which he received in Oklahoma and while incarcerated at NCF. It follows, then,  
15 that all staff responsible for his care at NCF are likely to be located in Oklahoma. So too are the  
16 relevant third-party medical providers.<sup>5</sup> And plaintiff has not identified any relevant, non-party  
17 witnesses who are residents of the Eastern District of California. Thus, the convenience of  
18 witnesses weighs strongly in favor of transfer to Oklahoma. *See Silva v. Aviva PLC*, No. 15-CV-  
19 02665-PSG, 2016 U.S. Dist. LEXIS 40617, \*14-15 (N.D. Cal. Mar. 25, 2016) (granting transfer,  
20 in part, because defendants showed that many important witnesses resided in transferee district,  
21 whereas plaintiffs failed to identify any non-party witnesses in transferring district).

22 The interests of justice also favor transfer. CoreCivic notes that all sources of proof –  
23 medical records and witnesses - are located in Oklahoma where, again, the relevant medical care  
24 was undertaken. And, if this action remains in this district, the court will be unable to compel

---

25 <sup>4</sup> District courts shall have original jurisdiction of all civil actions where the matter in  
26 controversy exceeds 75,000 dollars and is between citizens of different states. 28 U.S.C.  
27 § 1332(a).

28 <sup>5</sup> In its motion, CoreCivic lists Midwest Hospital, Parkview Hospital, Jackson County  
Memorial Hospital, Oklahoma University Medical Center, and Sayre Hospital. ECF No. 18 at 5.

1 non-party witnesses to testify. *See* Fed. R. Civ. P. 45(b)(2), 45(c)(A), 45(d)(3)(A)(ii). Finally,  
2 CoreCivic points out that plaintiff did not choose this forum - this action was removed to the  
3 Eastern District from state court. *See Actmedia, Inc. v. Ferrante*, 623 F. Supp. 42, 44 (S.D. N.Y.  
4 1985) (finding plaintiff's choice of forum "inapposite" where suit was removed from New York  
5 state court to New York federal district court).

### 6 3. Court Congestion

7 CoreCivic also argues that "[a]dministrative difficulties arising from court congestion in  
8 California is a prominent issue." ECF No. 18 at 6. The Ninth Circuit has held that, in deciding  
9 whether to transfer a case, a court may weigh public interest factors such as "the administrative  
10 difficulties from court congestion . . . ." *Decker Coal Co. v. Commonwealth Edison, Co.*, 805  
11 F.2d 834, 843 (9th Cir. 1986) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)).  
12 CoreCivic states that, as of June 2018, 708 civil cases per active judgeship were pending in this  
13 district. By contrast, 224 civil cases per active judgeship were pending in the Western District of  
14 Oklahoma.<sup>6</sup> This factor also weighs in favor of transfer.

### 15 4. The Remaining Factors

16 The court concludes that the remaining factors do not weigh strongly on either retaining or  
17 transferring the case. Thus, on the balance, transfer is warranted. In closing, the court notes that,  
18 by way of his opposition, plaintiff raised only the issue of the contract's forum selection clause.  
19 ECF No. 22 at 2-5. He offered no other rationale for keeping the case in this district.

### 20 Conclusion

21 Based on the foregoing, it is ORDERED that:

- 22 1. Defendant's motion to change venue (ECF No. 18) is GRANTED; and

23 /////

24 /////

---

25  
26 <sup>6</sup> CoreCivic relies on Federal Court Management Statistics (June 30, 2018), found at  
27 [http://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distprofile0630.2018.pdf](http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2018.pdf). Upon  
28 review, the court finds that the relevant numbers appear to 824 civil cases per judgeship in this  
district and 226 in the Western District of Oklahoma. Regardless of the exact numbers, the  
disparity is obvious.

1           2. This action is hereby transferred to the United States District Court for the Western  
2 District of Oklahoma.

3 DATED: May 16, 2019.



EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE